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No. 88, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF CALIFORNIA,
Plaintiff,

v.

STATE OF TEXAS, *et al.*,
Defendants.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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Defendant William R. Lummis (Texas Administrator of the Estate of Howard R. Hughes) ("Lummis"), a citizen of Nevada, files this his Brief in Opposition to Motion for Leave to File Complaint. Lummis requests that the Court defer ruling on the Motion until it has considered the companion Petition for Certiorari which was filed simultaneously by the California taxing officials and which has been opposed by Lummis and the Texas taxing officials, Respondents in that action. (No. 80-1556)

No party to the certiorari proceeding now contends that Lummis, as the representative of the Hughes Estate, should be denied relief against multiple death taxation by California and Texas. The present conflict is whether relief shall be by the pending statutory interpleader proceeding begun by Lummis in the district court and now the subject of the California taxing officials' Petition for Certiorari; or by an original action which California now seeks to institute.

This Court denied a previous Motion by California For Leave to File a Bill of Complaint. *California v. Texas,* 437 U.S. 601 (1978). Four members of the Court suggested, in concurring opinions, that the proper way to resolve the dilemma of the Hughes Estate was to file an interpleader action under 28 U.S.C. § 1335, interpleading all those who because of competing domicile claims are asserting entitlement to the intangible assets of the Hughes Estate. *Id.* at 601-2; 608, n.10; 615. Lummis promptly filed such an action. On October 27, 1980, the Court of Appeals for the Fifth Circuit held that the district court has subject matter jurisdiction in the interpleader action. *Lummis v. White,* 629 F.2d 397 (5th Cir. 1980). That judgment is the subject of the pending certiorari proceeding.

Thus, there already exists an adequate remedy for resolving the threat of multiple state death taxation that confronts the Hughes Estate. If this Court denies certiorari as urged by Lummis and the Texas taxing officials, the statutory interpleader action will go forward, and the convenience, efficiency and justice provided by that

remedy will render unnecessary the exercise of this Court's original jurisdiction.

Respectfully submitted,

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